

JAN 8 1997

Before the
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In re: Determination of Statutory)
License Terms and Rates for Certain) No. 96-5
Digital Subscription Transmissions) CARP DSTR
of Sound Recordings)

**DMX INC.'S OPPOSITION TO RIAA'S MOTION TO COMPEL
SERVICES TO PRODUCE IMMEDIATELY ALL DOCUMENTS UPON WHICH
THEIR WITNESSES RELIED AND TO PRECLUDE DIRECT TESTIMONY
REGARDING REQUESTED DOCUMENTS NOT PRODUCED**

DMX Inc. ("DMX"), by undersigned counsel, opposes the Recording Industry Association of America's ("RIAA's") Motion to Compel Services to Produce Immediately All Documents Upon Which Their Witnesses Relied and to Preclude Direct Testimony Regarding Requested Documents Not Produced.

RIAA's Motion is curious. As its purported basis, the Motion seizes upon certain standard reservations of the parties' right to supplement discovery responses and/or produce additional documents if the need arises in the future. The Services proffered these reservations in good faith, out of an abundance of caution in case unforeseen events arose. Any Motion to Compel based on such a benign reservation is, at best, premature.

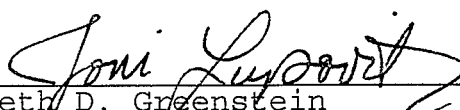
Other than its generic complaint about the reserved right to amend, RIAA's Motion presents no particular complaint against DMX's responses to discovery. If RIAA believes that specific DMX responses or objections are inadequate, RIAA should have questioned those responses directly. RIAA's baseless doubts regarding the Services' responses generally are insufficient to support its request for an Order against DMX.

DMX has produced all documents upon which its witnesses specifically relied at the time they prepared their direct testimony but for a few documents which have now come to DMX's attention. These few outstanding financial documents were the basis for minor adjustments from the figures set forth in DMX's Form 10-K which are reflected in certain figures cited in Exhibits 14, 17, 22, and 29 to DMX's Direct Case. Accordingly, although largely cumulative of documents already produced by DMX, these documents arguably could be deemed responsive to RIAA's document requests. DMX expects to produce these documents within a few days. With that minor exception, DMX produced all documents relied upon by its witnesses in a timely and complete fashion.

RIAA's request for an Order precluding DMX from presenting direct testimony based on requested documents that were not produced is unnecessary and largely moot. Only the few above-described documents are outstanding, and DMX voluntarily will produce them forthwith. Moreover, DMX will produce these documents well before the hearing in this matter, therefore the timing of their production is in no way prejudicial to RIAA.

For the foregoing reasons, and because DMX has complied in good faith with RIAA's discovery requests and RIAA can show no harm from DMX's discovery responses to date, RIAA's Motion should be DENIED with respect to DMX Inc.

Respectfully submitted,


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Dated: January 8, 1997

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 8, 1997, a true copy of the foregoing DMX Inc.'s Opposition to RIAA's Motion to Compel Services To Produce Immediately All Documents was served by hand, except as noted below, upon the following:

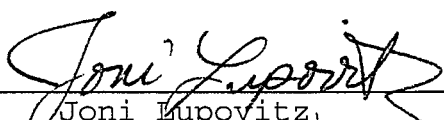
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